

Marvin J. Titzman
Executive Director



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TEXAS SURPLUS PROPERTY AGENCY

ADMINISTRATIVE OFFICE
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March 8, 1991

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Opinion Committee

The Honorable Dan Morales
Attorney General
P.O. Box 12548
Austin, Tx. 78711-2548

Re: Opinion Request

Dear Mr. Attorney General:

The Texas Surplus Property Agency is a state agency created by the Texas Legislature, Article 6252.6b, V.A.C.S. (Vernon's Supp. 1984). The Agency's primary function is to acquire, warehouse and distribute surplus federal personal property to entities and institutions which qualify under the Federal Property and Administrative Services Act of 1949. 40 U.S.C. 484(j), as amended. Through the administration of this federal grant-in-aid program, the agency generates its operating funds through the acquisition and redistribution of federal surplus personal property. These funds are maintained in the trust fund created by Article 6252-6b, V.A.C.S. The Texas Surplus Property Agency is included in the General Appropriations Act by the Texas Legislature, however, the appropriation does not include any General Revenue funds. All funds are maintained in the State Treasury.

The question has arisen concerning this agency's responsibility to protect agency assets from catastrophic loss and the authority to secure fire and casualty insurance protection to protect those assets.

The State Auditor's office in a finding of August, 1984 recommended that this agency obtain insurance coverage on the buildings owned by the agency. The State Auditor's recommendation was presented to the Texas Surplus Property Agency Board and discussed at length. Insurance coverage was considered because the cash reserve in the trust fund has never

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been sufficient to cover the agency's assets through a self-insured posture. A catastrophic loss would thus terminate the federal program. Pursuant to formal Board action, the Board directed that fire and casualty insurance be secured on agency buildings beginning in March, 1985. Since that time insurance coverage has been secured on agency buildings through competitive bidding and in accordance with applicable procurement and insurance rules. I have enclosed herewith copies of various supporting documents concerning the purchase of insurance coverage.

Insurance coverage for Fiscal Year 1991 was again competitively bid in accordance with applicable guidelines. The file was submitted to your office, the State Board of Insurance, State Purchasing and General Services Commission and the Comptroller of Public Accounts as we have in the past. You will note in the January 30, 1991 letter from the Comptroller's office that the purchase voucher for insurance coverage would not be paid. The letter from the Comptroller's office further indicates that the voucher was returned because it was unclear that the agency had "explicit or implied statutory authority and a specific appropriation" to purchase insurance. This action was taken by the Comptroller's office in spite of our past history of securing insurance with their approval, and after insurance was provided by the companies in accordance with their bids.

It is respectfully requested that your office review the circumstances of this matter and issue a formal opinion to answer the following three questions:

1.) Does the Texas Surplus Property Agency have the authority, either implied or explicit to protect agency owned buildings from loss by securing fire and casualty insurance through our enabling statute (Article 6252-6b V.A.C.S.) and the current General Appropriations Act which includes a specific line item appropriation for warehouse operations; and

2.) In the event that the agency does not have the authority to secure fire and casualty insurance coverage to protect assets, does the agency have the authority to look to the State of Texas, as a self insuring entity, to replace/repair a building damaged or destroyed by fire or other casualty and thus enjoy the same protection afforded other State Agencies and their assets; and

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3.) Does the agency have the responsibility to protect the agency's buildings from fire or casualty loss in order that a viable federal property donation program can be administered in the State of Texas in accordance with federal guidelines on a continuing basis.

This agency looks forward to your prompt response to these important questions.

Respectfully submitted,



Marvin J. Titzman
Executive Director

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Enclosed as stated:

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